

# **EXHIBIT A**

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK DIVISION

JOANNE NEALE, ET AL.,  
Plaintiffs

vs.

VOLVO CARS OF NORTH AMERICA,  
LLC, ET AL.,  
Defendants

CASE NO.

2:10-cv-04407-DMC-MF

CONFIDENTIAL - ATTORNEYS' EYES ONLY

PAGE 19 LINE 17 - PAGE 29 LINE 5

PAGE 45 LINE 6 - PAGE 49 LINE 14

ORAL VIDEOTAPED DEPOSITION

WALTER BRATIC

September 5, 2012

ORAL VIDEOTAPED DEPOSITION OF WALTER BRATIC,  
produced as a witness at the instance of the Defendants  
and duly sworn, was taken in the above-styled and  
numbered cause on the 5th day of September, 2012, from  
9:39 a.m. to 3:55 p.m., before Kelly Hanna, Certified  
Shorthand Reporter in and for the State of Texas,  
reported by computerized stenotype machine at the  
offices of Crowley Norman LLP, Three Riverway, Suite  
1775, Houston, Texas, pursuant to the Federal Rules of  
Civil Procedure and the provisions stated on the record  
or attached hereto.

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 4

1 THE VIDEOGRAPHER: Today is September 5,  
2 2012. We're on the record at 9:09 -- 9:39.

3 WALTER BRATIC,  
4 having been first duly sworn, testified as follows:

5 EXAMINATION

6 Q. (BY MR. HERZOG) State your full name for the  
7 record, sir.

8 A. Yes. My name is Walter Bratic.

9 Q. And where are you employed, Mr. Bratic?

10 A. I'm employed at a company called OverMont  
11 Consulting.

12 Q. What is OverMont Consulting?

13 A. It's a financial, accounting, statistical and  
14 economic consultancy.

15 Q. Who owns OverMont Consulting?

16 A. OverMont Consulting is owned by two  
17 shareholders.

18 Q. Who are the shareholders?

19 A. Myself and Carmen Eggleston.

20 Q. When was OverMont Consulting formed?

21 A. It was formed, to the best of my recollection,  
22 August of 2008.

23 Q. And can you generally describe for me what  
24 percentage of the business OverMont Consulting is  
25 consulting or testifying in connection with lawsuits?

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 10

1 come work for Ernst & Whinney here in Houston, to do  
2 consulting work for them.

3 Q. All right. And what -- what part of Ernst &  
4 Whinney did you -- did you go to work for? Were you on  
5 the audit side or were you on the consulting side?

6 A. I was on the consulting side; however, I began  
7 doing my work in the audit division.

8 Q. And you're a Certified Public Accountant; is  
9 that correct, sir?

10 A. I am.

11 Q. You became certified in 1981?

12 A. That's correct.

13 Q. When did you first take the exam?

14 A. I believe in 1980.

15 Q. And did you pass it on the first time?

16 A. I passed the parts I was qualified for the  
17 first time.

18 Q. Okay. And what parts were you not qualified  
19 for?

20 A. I hadn't gotten, I don't think, the hours  
21 yet -- my transcript hadn't come through -- to  
22 qualify -- I can't remember, because it was five parts  
23 back then, I think. I think the one part I wasn't  
24 qualified to sit for was audit.

25 Q. And, so, how many parts did you take when you

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 51

1 A. I don't know if the company still exists. It  
2 was acquired by Charles River Associates.

3 Q. Okay. All right. Let's -- let's turn to the  
4 next page.

5 You were a partner at  
6 PriceWaterhouseCoopers, correct, from 1998 to 1999?

7 A. From 1998 to 1999, I was a partner at  
8 PriceWaterhouseCoopers.

9 Q. Okay. And it says you were the Global  
10 Director/Partner, Intellectual Property Services, for  
11 the Financial Advisory Services Practice; is that  
12 correct?

13 A. That's correct.

14 Q. And was that here in the Houston office?

15 A. No -- well, I was based in Houston; but my  
16 responsibilities were worldwide.

17 Q. Okay. And from 1983 to 1998, you were employed  
18 by PriceWaterhouse, correct?

19 A. That's correct.

20 Q. And was -- is it fair to say, Mr. Bratic, that  
21 the majority of -- that -- strike that.

22 Is it fair to say, Mr. Bratic, that an  
23 area of primary expertise that you have is in  
24 intellectual property?

25 A. Yes.

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 64

1 consumers that the class vehicles are predisposed to a  
2 sunroof drainage system defect, collectively, the  
3 sunroof drainage defect, which leads to the accumulation  
4 of dirt, debris and other naturally occurring particles  
5 within the sunroof water drainage system as well as the  
6 kinking of tubing within the drainage system."

7 Did I read that correctly?

8 A. You did.

9 Q. And is it your understanding that that's the  
10 wrongful conduct that Volvo is alleged to have committed  
11 in this case?

12 A. I would say, aside from what's in the pleading  
13 regarding the -- the alleged -- the allegations I just  
14 read to you in Paragraph 13, from a product perspective,  
15 that's my understanding.

16 Q. Okay. So, your understanding is that the  
17 action arises from Volvo's failure to disclose to the  
18 plaintiffs and the consumers that the class vehicles are  
19 predisposed to a sunroof drainage system defect,  
20 correct?

21 A. Correct. Generally.

22 Q. Okay. Have you told me all the work you have  
23 done for Ford, to the best of your recollection?

24 A. I believe you were discussing it, and then you  
25 moved on to another subject matter.

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 92

1 Authority in a matter against Entergy involving the  
2 chilled air system.

3 Q. Okay. You were representing Fox?

4 A. Yes, I was representing Fox.

5 Q. And who hired you?

6 A. Jackson Walker.

7 Q. Okay.

8 A. The law firm of Jackson Walker.

9 MR. HERZOG: Why don't we take a break so  
10 the videographer can change the tape.

11 THE WITNESS: That's a great idea.

12 THE VIDEOGRAPHER: Okay. Off the record  
13 at 11:42.

14 (Recess taken from 11:42 to 11:53.)

15 THE VIDEOGRAPHER: Okay. Back on the  
16 record at 11:53. This is the beginning of Tape 2.

17 Q. (BY MR. HERZOG) Mr. Bratic, do you have any  
18 training, education or experience in automotive design  
19 or manufacture?

20 A. No.

21 Q. Do you have any training, education or  
22 experience in product warnings?

23 A. Product warnings?

24 Q. Yes, sir.

25 A. No.

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 94

1 tracking studies?

2 A. I don't know -- I'm not sure what you mean by  
3 that term -- I mean, what you mean by that question.

4 Q. Okay. Do you know what a tracking study is?

5 A. Well, as I understand, the term "tracking  
6 studies" has to do with tracking or analyzing frequency  
7 of occurrences of certain events.

8 Q. And do you consider yourself an expert in that  
9 area?

10 A. I consider myself to have a lot of experience  
11 in having done extensive analysis regarding frequency  
12 and occurrence of certain types of events -- recurrence  
13 of events. That's how I would answer that question.

14 Q. Do you consider yourself an expert in consumer  
15 behavior?

16 A. No.

17 Q. Do you consider yourself an expert in  
18 information diffusion?

19 A. No.

20 Q. Do you consider yourself an expert in  
21 engineering?

22 A. No.

23 Q. Have you ever owned or leased a Volvo vehicle?

24 A. I have owned a Volvo vehicle.

25 Q. Okay. What kind of Volvo did you own?



WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 108

1 components -- with automotive components that are --  
2 someone has to design the components. They have a  
3 specific characteristic. They have, you know, depth.  
4 They have three dimensions. So, they have some kind of  
5 design feature.

6 Q. Let's get at it this way, if we can. You're  
7 not an expert in the design of automobiles, are you,  
8 sir?

9 A. No, I'm not.

10 Q. And you're not an expert in the design of  
11 sunroof drainage systems, are you?

12 A. That's correct.

13 Q. Have you ever before researched or studied a  
14 sunroof drainage system?

15 A. No.

16 Q. And you've not conducted your own research or  
17 analysis on the sunroof drainage system that's at issue  
18 in this case, correct?

19 A. I'm sorry. Would you repeat that?

20 Q. Sure. You have not conducted your own research  
21 or analysis on the sunroof drainage system that's at  
22 issue in this case.

23 A. I'm not sure what you mean by you have not done  
24 your own analysis. You mean regarding the liability  
25 issues in this case?

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 109

1 Q. The design.

2 A. Oh, no, of course not.

3 Q. Okay. And --

4 A. I've relied on Dr. Benedict.

5 Q. Your -- strike that.

6 Your basis for -- or strike that.

7 You have assumed that there is a sunroof  
8 drainage system defect based on the report of  
9 Mr. Benedict in this case, correct?

10 A. Dr. Benedict, yes.

11 Q. Dr. Benedict in this case.

12 A. That is correct.

13 Q. All right. And have you done anything to  
14 independently verify or corroborate Dr. Benedict's  
15 report in this case?

16 A. No.

17 Q. And you have not talked with him about the  
18 report?

19 A. I have not talked to him about the report.

20 Q. Did you have any questions with respect to the  
21 report when you read it?

22 A. No.

23 Q. When did you first receive a copy of the  
24 report?

25 A. I would have received a copy of the report, I

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 125

1 A. That's -- that's -- it's no less than that at  
2 this time.

3 Q. Right. And, Mr. Bratic, if I understand your  
4 report correctly, that 42.8 million represents the cost  
5 of modifying the sunroof drainage system in the way  
6 recommended by Dr. Benedict, correct?

7 A. Correct.

8 Q. All right. And, so, in your report, that  
9 number is to be used to modify the system, correct?

10 A. It reflects the value -- the cost associated  
11 with repairing all those vehicles --

12 Q. Okay.

13 A. -- according to the methodology set forth in  
14 Dr. Benedict's certification.

15 Q. Okay. And in --

16 A. And with the -- I'm sorry, but just -- with the  
17 ongoing acknowledgment that I've mentioned to you  
18 already that there may be some modifications to the  
19 analysis based on the warranty database -- warranty  
20 spreadsheets that we talked about, but that shouldn't  
21 impact this number..

22 THE WITNESS: Bless you.

23 Q. (BY MR. HERZOG) And if I understand  
24 correctly --

25 A. Yes.

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 Q. -- you have eliminated from the estimate of  
2 total damages vehicles that are scrapped or no longer in  
3 service.

4 A. I made an effort to account for that.

5 Q. All right. And you -- you made an effort to  
6 account for that by using data available on the -- on  
7 the percentage of vehicles still in service as  
8 reported -- is it NHTSA that reported that?

9 A. Yeah, by the federal government.

10 Q. By the NHTSA?

11 A. That's correct.

12 Q. All right. And why did you eliminate those  
13 vehicles?

14 A. What -- a certain portion of vehicles?

15 Q. Yes, sir.

16 A. Well, because I wanted to be fair and  
17 conservative in my calculation, and I wanted to account  
18 for the fact that not all vehicles that were sold going  
19 all the way back to 2004, for example, are necessarily  
20 in service. Some may have been damaged through, you  
21 know, totaled as a result of accidents or things of that  
22 nature. And, so, it would be improper to include all  
23 vehicles.

24 Now, as my report pointed out, Volvo has  
25 not produced any statistics on Volvo's records on, you

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 know, Volvo's estimates or analysis of vehicles still in  
2 service, so I've used the best available information  
3 available from other sources.

4 Q. And, in your opinion, it would be improper to  
5 include vehicles not in service?

6 A. That's true.

7 Q. And why, in your opinion, would it be improper  
8 to include vehicles not in service?

9 A. Well, because if a vehicle was scrapped, for  
10 example, was totaled in an accident or so forth, then  
11 that vehicle is not being driven around anymore and it  
12 wouldn't be exposed or subject to the sunroof drainage  
13 defect.

14 Q. And wouldn't have the risk of a sunroof  
15 drainage defect?

16 A. Correct.

17 Q. If you would, sir, look at Footnote 24 on  
18 Page 6 of 15. Do you have that in front of you?

19 A. I'm going to get it.

20 Q. Sure.

21 A. Okay. I'm on Page 6.

22 Q. Okay. Footnote 24?

23 A. Yes.

24 Q. Do you have that in front of you?

25 And that footnote states "Counsel has

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 130

1 warranty repair -- warranty work -- to do the -- to  
2 correct the drainage -- sunroof drainage defect as set  
3 forth by Dr. Benedict.

4 Q. Okay. He's a former owner?

5 A. Yes.

6 Q. Okay. Now, he sells it -- the fellow that he  
7 sells it to, okay, and this owner owns it.

8 A. Correct.

9 Q. At -- at the -- and he still has not  
10 experienced any -- any problem with the sunroof drainage  
11 system. Has he suffered damages?

12 A. Well, let me put it -- let me answer it this  
13 way.

14 MR. WEBER: I'm -- same objection I made  
15 before.

16 A. Each vehicle has suffered at least the damages  
17 associated with the required drainage defect. So, I'm  
18 not saying there's -- there's no duplication of -- of  
19 damage claim here. For example, either the former owner  
20 or the current owner, but that vehicle.

21 Q. (BY MR. HERZOG) That's -- that's what I'm  
22 trying to get at.

23 A. Yeah. There's no duplication.

24 Q. Okay. Either the former owner --

25 A. Or the current. That's why --

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 Q. -- or the -- or the current owner is -- is  
2 entitled to it, to -- to the repair. The vehicle is  
3 entitled to the repair --

4 A. Right.

5 Q. -- in your opinion?

6 A. Correct. And that's why you see, when we  
7 discussed this before the lunch break, the word "or" was  
8 used.

9 Q. Right.

10 A. But it also is "and" in --

11 Q. Right.

12 A. -- in that context.

13 Q. Right.

14 A. But only once. Each vehicle would only be  
15 subject to the prescribed repairs, according to  
16 Dr. Benedict's analysis.

17 Q. Okay. And -- and, so, is it -- is it fair to  
18 say, then, Mr. Bratic, that for the -- the vehicles  
19 where there is a current owner --

20 A. Yes.

21 Q. -- and they're still in use --

22 A. Yes.

23 Q. -- that the former owner didn't suffer any  
24 damages?

25 MR. WEBER: Objection, form. Calls for --

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 Q. (BY MR. HERZOG) The current owner is the one  
2 who suffers the damages, and they're the ones that need  
3 to get the vehicle repaired, right?

4 MR. WEBER: Objection, form. Calls for a  
5 legal conclusion. Outside the scope of the report.

6 A. I do not know in your hypothetical whether the  
7 former owner would still be entitled to damages. What I  
8 do know is, based on my analysis, that the current owner  
9 of a vehicle would be entitled to --

10 Q. (BY MR. HERZOG) The cost of repair?

11 A. -- the cost of correcting the defect per  
12 Dr. Benedict.

13 Q. Okay. Now, assume that -- just -- just so  
14 we're clear, okay, you've got a current owner and you've  
15 got former owners and where the vehicle is still in  
16 service, your opinion is that the current owner is  
17 entitled to -- assuming that the vehicle has not had any  
18 modifications to the sunroof drainage system -- then the  
19 current owner is the one who is entitled to the cost of  
20 modifying the sunroof drainage system, according to  
21 Dr. Benedict?

22 MR. WEBER: Objection, form. Outside the  
23 scope of the report.

24 THE WITNESS: Would you read that back,  
25 please.



Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 (The record was read as requested.)

2 A. I haven't made a determination if it's the  
3 current owner or the former owner. It's just at least  
4 either/or is entitled to the -- the cost associated with  
5 the correction of the defect.

6 Q. (BY MR. HERZOG) Okay. And the -- the damages  
7 that you've described as the cost associated with  
8 remedying the defect as described by Dr. Benedict are  
9 for the purposes of eliminating the risk of a clogged  
10 sunroof drain and resulting leak inside the vehicle,  
11 correct?

12 A. Well, I'm not serving as a technical expert in  
13 this case. So, I don't really want to talk about the  
14 word "risk." All I'm -- all I understand is it's my  
15 understanding that there is a defect in certain model  
16 vehicles as described in the table on Page 4 of my  
17 report, and it's my understanding that according to  
18 Dr. Benedict, all vehicles still in service would  
19 require the corrective procedures that he set forth in  
20 his --

21 Q. Okay.

22 A. -- certification --

23 Q. Okay.

24 A. -- in order to eliminate that sunroof drainage  
25 defect.

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 Q. Okay. Got it. So, let's see if we can make  
2 sure the record is clear.

3 Your opinion is that the 42.8 million in  
4 damages is necessary to eliminate the defect in the  
5 vehicles as claimed by Dr. Benedict, correct?

6 THE WITNESS: Would you read that back,  
7 please.

8 (The record was read as requested.)

9 A. Yes.

10 Q. (BY MR. HERZOG) All right. And, so, in the  
11 circumstance where you have a former owner --

12 A. Yes.

13 Q. -- who has driven the vehicle, but who has not  
14 suffered any consequences of the alleged defect, okay,  
15 he hasn't had a clogged sunroof drain, hasn't had any  
16 water in the vehicle, and now sells that vehicle and  
17 you've got a current owner. The current owner is the  
18 owner that is now driving the vehicle that Dr. Benedict  
19 says is defective, right?

20 MR. WEBER: Objection, form. Calls for a  
21 legal conclusion. Outside the scope of his report.

22 A. I do not have his complete report in front of  
23 me but -- let me look here -- but so far as I recall  
24 from at least the sections I have cited here, he doesn't  
25 make a distinction between current and former owners.

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 MR. HERZOG: Stop it. Make your objection  
2 to form or we're going to get the magistrate on the  
3 phone.

4 MR. WEBER: In -- in that case, I'm  
5 instructing the witness not to answer because it's  
6 outside the scope of his report. He didn't opine on it.  
7 You're entitled to take his opinions based on what he's  
8 opined on.

9 MR. HERZOG: Let's go off the record.

10 THE VIDEOGRAPHER: Off the record at 2:12.

11 (Recess taken from 2:12 to 2:14.)

12 THE VIDEOGRAPHER: Okay. Back on record  
13 at 2:14.

14 Q. (BY MR. HERZOG) Are you offering any opinion in  
15 this case, Mr. Bratic, that class members have suffered  
16 any damages other than those identified in your report?  
17 And I'm not talking about the quantification of it --

18 A. Right.

19 Q. -- because I know you may need to make some  
20 further modifications to the quantification, but I'm  
21 talking about the types of damages.

22 A. Well, I talk about two types of damages --

23 Q. Correct.

24 A. -- that have been sustained.

25 Q. Right. And are you offering any opinion that

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 class members have suffered any type of damages other  
2 than the two types that you have identified in your  
3 report?

4 A. No, I am not.

5 Do you want to make it clear for the  
6 record what the two types of damages are?

7 Q. I'm going to.

8 A. Oh, okay.

9 Q. We're going to get to that.

10 A. All right. Fine.

11 Q. I just wanted to make --

12 A. That's fine.

13 Q. I thought I could get at it that way.

14 A. That's fine.

15 Q. Returning, if we could, to Paragraph 14 --

16 A. Paragraph 14.

17 Q. -- of Exhibit D-1.

18 A. All right.

19 Q. The sentence at the bottom of the page, on  
20 Page 6, that begins "Second."

21 A. Yes.

22 Q. "Second, members of the Nationwide Class who  
23 have experienced sunroof drainage failure" --

24 A. Right.

25 Q. -- "which was not treated as a warranty claim,

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 A. From an economic or financial perspective, the  
2 term "aggregate damages" would mean to me the sum total  
3 of damages sustained from a given event or -- or  
4 incident.

5 Q. (BY MR. HERZOG) Have you ever heard the term  
6 "aggregate damages" in connection with a lawsuit or a  
7 class action lawsuit that you've been involved in?

8 A. Yes.

9 Q. Okay. In what context?

10 A. In the context of what the total cost --

11 Q. Okay.

12 A. -- to make the class whole.

13 Q. And -- and without calculating damages as to  
14 any particular individual class member, correct?

15 A. Yes.

16 Q. All right. And is it fair to say that the  
17 calculation that you're using regarding the loss  
18 allegedly sustained by nationwide class members is  
19 expressed in terms of aggregate damages?

20 A. It is.

21 THE WITNESS: I'd like to take a break  
22 sometime soon.

23 MR. HERZOG: Go ahead. We can take it  
24 now.

25 THE WITNESS: Just cause -- it would make

Walter Bratic 9/5/2012

CONFIDENTIAL ATTORNEYS' ONLY PAGE 19 LINE 17 - PAGE 29 LINE 5 AND PAGE 45 LINE 6 - PAGE 49 LINE 14

1 it go easier the next time.

2 MR. HERZOG: Sure.

3 THE VIDEOGRAPHER: Okay. Off the record  
4 at 2:40.

5 (Recess taken from 2:40 to 2:45.)

6 THE VIDEOGRAPHER: Okay. Back on the  
7 record at 2:45. This is the beginning of Tape 3.

8 Q. (BY MR. HERZOG) Mr. Bratic, going back to our  
9 discussion earlier about a world in which disclosure of  
10 the alleged sunroof drainage defect had been made,  
11 you're not prepared to offer an opinion, are you, sir,  
12 as to how class members would have reacted had they  
13 known the allegedly concealed information?

14 A. I have not been asked to perform an analysis of  
15 that.

16 Q. So, you don't know and you're not prepared to  
17 offer an opinion today, are you, sir, that class members  
18 would have made a different purchase or lease decision  
19 if the information had been disclosed?

20 A. No, I'm not prepared to offer any opinion on  
21 that subject matter today.

22 Q. Are you offering an opinion, sir, with respect  
23 to the damages suffered by class members if the  
24 information had been disclosed?

25 A. Yes, that's the analysis I have performed.

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 156

1           A.     If -- in your hypothetical, if a class member  
2     was only informed of the defect and that's it, then  
3     they've suffered diminishment in the value of their  
4     vehicle, for the fact there's a known defect in the  
5     value of their vehicle. It shouldn't be there.

6           Q.     (BY MR. HERZOG) All right. And have you done  
7     any analysis to determine what that diminished value  
8     would be?

9           A.     No.

10          Q.     The second type of damage described in your  
11     report -- and we've touched on it briefly -- is that  
12     nationwide class members who have experienced a sunroof  
13     drainage failure not treated as a warranty claim have  
14     incurred out-of-pocket costs associated with the repairs  
15     performed on their vehicles, correct?

16          A.     Yes.

17          Q.     All right. And the damages that such -- such  
18     class members suffered would be the out-of-pocket costs  
19     that they incurred in repairing their vehicles, correct?

20          A.     Yes. Just to make sure we're clear, you're  
21     talking about the members of the class who either were  
22     denied warranty coverage or who had the defect repaired  
23     after the warranty period expired, their damages would  
24     be measured by the out-of-pocket costs incurred.

25          Q.     Okay. And, so, you're giving the opinion that

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 170

1 Q. Right.

2 A. And he was told yes.

3 Q. Right.

4 A. All right. Well, he still would have suffered  
5 damages because in your hypothetical he wasn't told  
6 there was a defect.

7 Q. Okay.

8 A. Even though they have the same parts, he wasn't  
9 told whether or not there was a defect or not, even  
10 though the same parts existed.

11 Q. Let's -- okay. So, let's modify. Same  
12 hypothetical and he says "Does this XC90 have the same  
13 possibility of a clogged drain -- sunroof drain,  
14 resulting in water ingress into the vehicle as did my  
15 S60?" Okay?

16 A. Yes.

17 Q. The Volvo dealer says, yeah, it's got the same  
18 drain.

19 A. Well, yes, meaning yes, it has the same defect?

20 Q. Yeah.

21 A. All right.

22 Q. Yeah. Tells him -- tells him yeah. Has the  
23 same problem. Now, you call it a defect. I call it an  
24 alleged defect or a problem.

25 A. No. Right.



WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 171

1 Q. But we're talking about the same thing, right?

2 A. Well, we're assuming that there's a defect --

3 Q. Right.

4 A. -- for the purpose of my analysis.

5 Q. Right. Right.

6 A. Okay.

7 Q. So --

8 A. Now, there's two answers to that.

9 MR. WEBER: Hang on. Are you done with  
10 your question?

11 MR. HERZOG: Yeah.

12 MR. WEBER: Calls for a legal conclusion.  
13 Incomplete hypothetical. Outside the scope of the  
14 report.

15 A. Two things. One, I don't know if, from a legal  
16 perspective, that particular purchaser has waived any  
17 rights he had with respect to making a claim for a  
18 defective vehicle because he was on notice about the  
19 defect but went ahead and bought the vehicle; but from  
20 an economic standpoint, he certainly has incurred damage  
21 with respect to he's got a vehicle with a defect,  
22 that that defect needs to be cured.

23 Q. (BY MR. HERZOG) Okay. You're an expert in  
24 statistics, right?

25 A. I use statistics in my work -- have been --

WALTER BRATIC - September 5, 2012

Page 19 Line 17 - Page 29 Line 5 & Page 45 Line 6 - Page 49 Line 14 Are Confidential Attorneys' Eyes Only

Page 174

1 drainage defect in the class vehicles, but you haven't  
2 done so?

3 A. It may be possible to do so. I haven't  
4 undertaken that --

5 Q. All right.

6 A. -- because I -- once I realized that I had  
7 incomplete information, it was just pointless to  
8 proceed.

9 Q. Are you offering the opinion that all members  
10 of the proposed class have suffered the fact of injury?

11 A. I've been asked to assume that.

12 Q. Okay. Have you attempted to measure or  
13 estimate the risk of a clogged sunroof drain in the  
14 class vehicles?

15 A. That's a technical question. I have performed  
16 no analysis regarding any technical matters.

17 Q. No, I understand; but this is a precise  
18 question.

19 Have you attempted to measure or estimate  
20 the risk of a clogged sunroof drain in the class  
21 vehicles?

22 A. Well, that, to me, is a technical question.  
23 It's the risk of a failure occurring, an event  
24 occurring; and that has to do -- that's a technical  
25 issue. I haven't -- I -- I'm not qualified to make that